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OFFICE OF PETITIONS

In re Application of	:
Najla Guthrie et al.	:
Application No. 10/697,563	:
Filed: October 31, 2003	:
Attorney Docket No.: 182718-	:
335142	:
Title: USE OF POLYMETHOXYLATED	:
FLAVONES FOR TREATING INSULIN	:
RESISTANCE	:

This is a decision on the petition filed on May 8, 2006, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

BACKGROUND

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed August 8, 2005, which set a shortened statutory period for reply of three (3) months. An after final amendment was received on December 12, 2005, along with a one-month extension of time, and an advisory action was mailed on January 13, 2006. No additional extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained, and no further responses were received. Accordingly, the above-identified application became abandoned on December 9, 2005. A notice of abandonment was mailed on April 19, 2006.

RELEVANT PORTION OF THE C.F.R.

37 C.F.R. §1.8(b) sets forth, *in toto*:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a)

of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

ANALYSIS

With the present petition, Petitioner has asserted that a Request for Continued Examination (RCE) was filed on February 8, 2006, along with a three-month extension of time. Petitioner has submitted a copy of this submission, and it is noted that it contains a certificate of mailing dated February 8, 2006.

Certificate of mailing practice provides a mechanism by which Applicants may evince that a paper was timely submitted to the Office, in the event that the correspondence is not received.

Petitioner's submission has been reviewed: with the present petition, Petitioner has informed the Office of the previous facsimile transmission, provided an additional copy of the previously submitted correspondence, however he has not included a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely transmission. It is noted that the certificate of mailing was executed by a Ms. Marina Krioutchkova, and it does not appear that a statement from this individual has been submitted with the present petition.

Fortunately, Petitioner has further submitted a postcard receipt which evinces the receipt of the RCE in the Office on February 13, 2006.

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn. It is clear that a response was timely submitted. Considering the facts and circumstances of the delay at issue, as set forth on petition,

it is concluded that petitioner has met his burden of establishing that a submission was timely submitted.

Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the RCE which was received with the present petition can be processed, along with the submission: the amendment which was received on December 12, 2005.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225¹. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanoski
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Office of Petitions
United States Patent and Trademark Office

¹ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. §1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).